United Nations CAT/C/62/D/722/2015

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
10 January 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 722/2015*, **

Communication submitted by:	B.K. (not represented by counsel)
Alleged victim:	The complainant
State party:	Norway
Date of complaint:	21 December 2015 (initial submission)
Date of adoption of decision:	4 December 2017
Subject matter:	Deportation of complainant from Norway to the Democratic Republic of the Congo
Procedural issue:	Admissibility — non-exhaustion; manifestly ill-founded
Substantive issue:	Torture — prompt and impartial investigation
Articles of the Convention:	3 and 22

Background

1.1 The complainant is Mr. B.K., a citizen of the Democratic Republic of the Congo, born in 1981. He initially submitted his communication on 15 December 2015 and sent further information on 23 December 2015. He fled the Democratic Republic of the Congo fearing for his life and at the time of submission of the complaint was residing in Norway. His initial asylum application was rejected on 16 September 2011. On 22 August 2013, the Immigration Appeals Board rejected an appeal submitted by the complainant and the Norwegian authorities asked him to leave the country, indicating that otherwise he would be forcibly deported. The complainant asserts that his rights under article 3 of the Convention will be violated if Norway proceeds with his deportation. The complainant is not represented by counsel.

1.2 On 24 December 2015, the Committee, acting through its Rapporteur on new complaints and interim measures asked the State party not to deport the complainant while his complaint was being considered by the Committee.[1] On 10 October 2016, the State

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.

[1] That request was then reiterated by the Committee to the State party on 29 August and 20 September 2016.

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party informed the Committee that it had decided "after careful consideration, not to accept the Committee's invitation to implement interim measures in the present case".[2]

The facts as presented by the complainant

2.1 The complainant submits that he was born and raised in Bukavu, South Kivu province, Democratic Republic of the Congo. In January 2010, he was abducted, along with other people, by Interahamwe militia members, also known as the Democratic Forces for the Liberation of Rwanda (FDLR), and taken to the forest to serve as carriers for the militia members. Sometime after he was abducted, the army raided the camp where the complainant was held. He was detained and imprisoned by security officials in a prison in Bukavu, accused of being a top informant for FDLR.

2.2 The complainant claims that he was tortured while in detention. He submits that he managed to escape from the prison and get to Rwanda, from where he fled to Norway with the help of a smuggler. He arrived in Norway in July 2011 and applied for asylum. On 16 September 2011, he was notified that his asylum request had been rejected by the Norwegian Directorate of Immigration. The complainant appealed that decision before the Immigration Appeals Board. On 22 August 2013, he was informed that his appeal had been rejected. The complainant then hired a private lawyer, who filed a second appeal to the Immigration Appeals Board, which indicated that the complainant had no right to file a second appeal and on about 7 October 2013, informed his lawyer that he should leave Norway immediately. The complainant alleges that those decisions recognized that he could suffer an irreparable harm, including torture if he returned to Bukavu, but considered that he could resettle in Kinshasa, as it was a big city where he could hide from the government officials who had tortured him before. The complainant indicates that he stayed in Norway after the decision on his second appeal.

2.3 On 24 June 2014, the complainant was arrested at the asylum centre at 4 a.m. He indicates that police officers took him to Oslo where he was kept in a cell, alone, for about six days. He was subsequently brought before a court. He was not informed why he was there. The court decided that his case should be reviewed by the Immigration Appeals Board once again. He was released and went back to the asylum centre. On 30 November 2015, the Board issued its decision rejecting the asylum application and asked the complainant to leave the country by 28 December 2015, stating that otherwise he would be forcibly deported. According to the complainant, that decision upheld the preceding decisions taken in his case, as it was considered that although he could be at risk in Bukavu, he could resettle in Kinshasa.

2.4 The complainant claims that he has exhausted all domestic remedies, as the decision of the Board is final.

The complaint

3.1 The complainant states that he fears that if returned to the Democratic Republic of the Congo, he will be tortured or killed by the authorities owing to the allegations that he was a top informant for FDLR.

3.2 The complainant claims that the Directorate of Immigration and the Immigration Appeals Board did not take into account that the officials who tortured him belonged to the Government which is currently in power. Therefore, the argument that he could resettle in Kinshasa is not valid, as the Government is present in the whole territory of the country. He could therefore be arrested anywhere in the country and probably be tortured or killed. In addition, his wife, who is still in Bukavu, has informed him that government officials are still looking for him.[3] The complainant quotes a report of 2012 by the Office of the United Nations High Commissioner for Refugees (UNHCR), in which UNHCR states that it is not recommended that persons from North Kivu and South Kivu are returned there, but to other

[2] On that date and on several other occasions, the State party asked the Committee to lift interim measures, but these requests were not granted.

[3] The complainant does not provide further details on this matter.

parts of the country, provided that they have strong and close links in those other areas. The complainant claims that he has no strong or close links in other areas of the country.

3.3 The complainant maintains that if he is deported, there is a real risk that he would be tortured. He claims that as a person from the South Kivu region who has been subjected to abuse by the authorities and who has subsequently been sought by them, he will be in great danger and at risk of torture or ill-treatment if he is returned to his home country. He quotes reports from non-governmental organizations, according to which different armed groups continue to carry out brutal attacks on civilians in the Eastern part of the country, including in South Kivu.[4] He also mentions that torture and ill-treatment are endemic throughout the country and that perpetrators are not held accountable.[5]

State party's observations on admissibility and the merits

4.1 On 12 February, 18 March and 24 June 2016, the State party provided its observations on admissibility and the merits of the complaint. It submits that the complainant entered Norway on 29 July 2011. When police registered the complainant, he indicated that he "had no criminal record" and that "he was not politically active in his home country". He was not in possession of a passport or any other travel documents.

4.2 An asylum interview was conducted on 30 August 2011. The Committee should take note of a number of "conspicuous claims" made by the complainant. He claims, for example, that he was captured by Interahamwe militia while driving to Shabunda, but he was not able to provide details about the drive. He claimed that he lived in the militia camp from January to May 2010, but was not able to describe the camp. According to the complainant, his brother had to pay a bribe to free him from prison in October 2010. The complainant could not, however, state the amount of the bribe. Following a detailed assessment in the light of available country information, the application for asylum was rejected by the Directorate of Immigration on 16 September 2011.

4.3 The Directorate "did not conclude on the veracity of the complainant's information about his identity", regarding his claims, for example, that he was originally from the eastern Congo and it noted that the complainant in his application for asylum made general statements and included few details about his time with the Interahamwe and in prison in Bukavu. The Directorate decided that even on the basis of the information he had provided, the complainant could receive effective protection elsewhere in the country.

4.4 The State party refers to the 2007 report by the Norwegian Country of Origin Information Centre on the human rights situation in the Democratic Republic of the Congo. The State party submits that the complainant was not a high-profile critic of the regime or a rebel. The authorities in the Democratic Republic of the Congo have no computerized system of registering and monitoring rebels or previously detained persons. It is a large country that does not require identity cards to be carried.

4.5 On 22 August 2013, the Immigration Appeals Board rejected an appeal submitted by the complainant. It concluded that the complainant could safely return to the "government-controlled areas in the west" of the country. In particular, the Board was of the opinion that the complainant could return to Kinshasa, a "multi-ethnic city, where the complainant's ethnicity would not pose a problem". The complainant was given until 24 September 2013 to leave the country, but failed to comply. The State party wishes to emphasize that the decision of 22 August 2013 was the final decision in the case and rejects the claims that the consideration took almost five years as claimed by the complainant. The State party recalls that the initial application was rejected on 16 September 2011, so the case took only two years.

[4] See Human Rights Watch, *World Report 2015* and Amnesty International report 2014/2015, *The State of the World's Human Rights*.

[5] The author claims that the Amnesty International report for 2016/2017 indicates that torture and ill-treatment often take place during unlawful arrests and detention by the State security services, including in some cases causing death. See www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/.

4.6 On 24 September 2013, the complainant requested that his asylum application be reviewed again, because he claimed that he had been armed with weapons by the Interahamwe, information which had not previously been provided. That request was rejected on 16 October 2013. In its decision, the Immigration Appeals Board stated that even if it were to believe that the complainant had played a more active role in the Interahamwe or FDLR, he still had not sufficiently substantiated his allegations that on return to his home country he risked persecution, from which he required protection under the Convention. The Board referred to the 2007 report by the Norwegian Country of Origin Information Centre on the human rights situation in the Democratic Republic of the Congo, according to which people seeking protection abroad and subsequently returning home were unlikely to get into trouble with the authorities, as long as they returned to the country via Kinshasa.

4.7 On 11 February 2014, the Norwegian Organization for Asylum Seekers informed the complainant that they would not offer legal help in his case, since the organization only takes cases where "there is a realistic possibility" of changing the decision of the Immigration Appeals Board. The organization had decided that the rejection of the asylum application did not raise "particular issues".

4.8 On 24 June 2014, the complainant was arrested by the police to procure his return to his country of origin. After his arrest, he again requested that his asylum request be reviewed. At the same time, he gave notice of legal action to quash the 2013 decision whereby his asylum application had been rejected. The notice of legal action, however, "proved to be of little consequence", since the complainant "did not institute legal proceedings". On 1 July 2014, the complainant "was expelled from Norway".[6] He received an advance notice about his expulsion on 27 June 2014, to which he did not reply.

4.9 The complainant did not file an administrative complaint against the expulsion notice, although he was entitled to do so and had been informed of that possibility. On 1 July 2014, the complainant was granted a "deferred implementation" until the Immigration Appeals Board had considered its decision on the second request to reverse its 2013 decision rejecting the asylum application. On 27 November 2015, the Board rejected the second request as well, maintaining its previous conclusion that the author did not merit protection under the Convention. In its decision, the Board again stated that the complainant could "receive effective protection in Kinshasa".

4.10 The State party refers to a new report prepared by the Norwegian Country of Origin Information Centre entitled "The Democratic Republic of Congo: internal migration", published on 19 February 2015. The report describes the country and its capital city as "affected by a multifaceted crisis in which the State has collapsed, the health care is dysfunctional and only a small proportion of the population has regular access to electricity, clean water and sanitation systems" and that "sources indicate that personal networks are highly significant to coping in Kinshasa". This was also confirmed by the recommendation of UNHCR in the report of December 2012.

4.11 The State party, however, considers that having a personal network is only one element of the comprehensive assessment and cannot be a determining factor. In other circumstances, applicants have been granted protection where there were other "exigent" facts, such as single women with children, or persons experiencing significant health issues. The Immigration Appeals Board considered the situation in Kinshasa to be difficult, but that it could not be claimed that it had worsened in recent years. The situation, the Board considered, "has been bad for a long time", and had not "improved in recent years". The Board also noted that Kinshasa was a large city, with inhabitants coming from different ethnic groups, and there was no evidence of conflict between those ethnicities.

4.12 The complainant claims to be a member of the Bashi ethnic group from Bukavu in South Kivu and that he speaks Mashi, Swahili and French. He has 15 years of schooling. There is no information about the complainant having "family or other networks" in Kinshasa. He has no mental or physical problems. He must "therefore be considered a

[6] This seems to be referring to a decision to expel the complainant, not his physical removal, as he was removed at a later date.

resourceful man, who should be able to manage, even if, as a starting point, he doesn't have a network in Kinshasa".

4.13 The complainant was given a new deadline of 28 October 2015 to leave the country, but he did not comply with that request and continued residing in Norway unlawfully. On 21 December 2015, the complainant submitted the present communication to the Committee. On 7 January 2016, the complainant requested a third review of the 2013 decision of the Immigration Appeals Board rejecting his application. That request was rejected on 26 January 2016. On 28 January 2016, the complainant gave notice to the Board that he was taking legal action to quash the 2013 asylum decision.

4.14 The State party submits that it fully recognizes the protections that are needed under the Convention and which are also enshrined in domestic law, specifically article 1 (1) of the Immigration Act. The Norwegian courts are therefore fully authorized to consider and determine complaints regarding alleged violations of the Convention and to quash decisions made by the Immigration Appeals Board. Section 73 of the Immigration Act provides for absolute prohibition of expulsion, where there is a "well-founded fear of persecution" based on race, religion, nationality, etc. Furthermore, the Dispute Act provides avenues for complainants to institute legal proceedings if the decision has been negative.

4.15 As stated above, the complainant could have applied for an "interlocutory injunction" ordering the immigration authorities to stay his expulsion. The European Court of Human Rights has previously found such remedies to be effective for the purpose of article 35.[7] The State party submits that in the present case, such remedies could have brought relief to the complainant within a reasonable time, but unfortunately the complainant did not institute legal proceedings to stay execution of the 2013 decision. The complainant further failed to file an appeal against the decision to expel him. The complainant therefore did not exhaust all effective and available domestic remedies.[8]

4.16 The State party also submits that the complaint is not justified as the complainant has failed to prove that he faces irreparable harm. For the purposes of admissibility of article 22 of the Convention, the complainant must establish a prima facie case. According to the Committee's jurisprudence, the burden of presenting an arguable case also lies with the complainant. Furthermore, the Committee should give considerable weight to findings of fact made by the State party. In the present case, the complainant had an opportunity to present his case, in person and in writing, before the immigration authorities. He had legal representation which was paid for by the State party. The competent authorities had the benefit of receiving direct responses and explanations from the complainant.

4.17 The country information is compiled by the Norwegian Country of Origin Information Centre, which is an independent body within the Norwegian immigration authorities. Its reports are used by other government agencies. The immigration authorities, however, cannot influence the content of those reports. Furthermore, the Centre does not provide an opinion as to whether a specific case should be approved or rejected.

4.18 In the light of its previous experience with asylum seekers from the Democratic Republic of the Congo, the Immigration Appeals Board has extensive relevant experience. Individual assessments were made by the Board and the application was re-examined on three different occasions. Based on the assessments and submissions mentioned above, the State party submits that the complainant has failed to substantiate his claims that the authorities would take a specific interest in him upon his return.

4.19 The European Court of Human Rights has recently concluded that there is no general risk of torture upon return to the Democratic Republic of the Congo.[9] In *Rugira v. the Netherlands*,[10] the Court concluded that asylum seekers from the eastern part of the

[7] The State party refers, inter alia, to *Agalar v. Norway*, application No. 55120/09, 8 November 2011.

[8] In its submission dated 24 June 2016, the State party submits that on 4 March 2016, the complainant instituted legal proceedings before the Oslo district court to quash the decision of the Immigration Appeals Board. The oral hearings were scheduled for 27 and 28 June 2016.

[9] The State party refers, inter alia, to *Mawaka v. the Netherlands*, application No. 29031/04, paras. 41–43.

[10] Application No. 10260/13.

country could safely relocate to other parts of the country, including Kinshasa. That position was further upheld in *M.M.R. v. the Netherlands*.[11] In the absence of a general risk, the complainant also failed to prove that he faced individual threats and that he would be of sufficient interest to the authorities. The State party recalls the findings of the Committee in *M.D.T. v. Switzerland* (CAT/C/48/D/382/2009), in which it stated that the complainant had not shown that he was still a wanted person in his country.[12]

Complainant's comments on the State party's observations

5.1 The complainant, responding to the State party's observations, submitted that he does not have legal knowledge and does not speak Norwegian. The complainant believes, however, that the State party authorities mishandled his asylum application. The State party relies on the 2007 report by the Norwegian Country of Origin Information Centre on the human rights situation in the Democratic Republic of the Congo, which "lacks independence, authenticity and conclusiveness in arriving at sensitive conclusions in cases where life is involved". That report was written not to show the real situation in the country, but to achieve a solution for dealing with asylum seekers in Norway.

5.2 The report was "compiled in 15 days" and it is not known what areas in the country were covered by the drafters. It may not contain information from informal sources regarding "extrajudicial killings" in the Democratic Republic of the Congo. The report was written in 2007, several years before the events of 2011, and the situation on the ground could have changed significantly.

5.3 The Directorate of Immigration arrived at the conclusion that the complainant could reside in Kinshasa. That conclusion overlooks the fact that the complainant does not have relatives or any other network in Kinshasa, putting him at risk of "the government authorities and informal criminal gangs" which operate in Kinshasa with impunity.

5.4 The State party claims that the complainant is not a "high-profile critic of the regime". The complainant submits, however, that "most reports from international organizations" show an increase in the number of extrajudicial killings of "low-profile" critics of the regime and the majority of those deaths are not reported.

5.5 The argument that the complainant could return to Kinshasa raises a number of "fundamental questions". The complainant is concerned, for example, as to how he will be treated at the airport and whether the authorities will try to verify where he has been, why he was absent, etc. Kinshasa is located 2,000 kilometres from the complainant's hometown of Bukavu and the complainant submits that he does not speak the language spoken in Kinshasa. If returned to the Democratic Republic of the Congo, the security services would have "about a 99 per cent possibility" of identifying, arresting and subjecting him to torture, since they would consider him to be a former rebel returning from Europe.

5.6 The complainant also submits that there were no issues regarding his identity, as opposed to the claim of the Norwegian authorities. In June 2014, the authorities applied for a passport on his behalf, to be able to deport him and a passport was issued to him by the Consulate of the Democratic Republic of the Congo in Denmark.

5.7 Furthermore, regarding his handling of weapons, he had not disclosed it immediately, because he was afraid that the authorities would consider him a "dangerous person", reducing his chances of receiving asylum. The complainant admits that he received free legal advice until his application was rejected by the Immigration Appeals Board. He did not have any money since he did not have a work permit. He asked some friends for help and with their help he was able to hire a lawyer, who could provide services only to cover the requests to reverse the 2013 decision rejecting his claim for asylum. He did not have money to hire a lawyer to file an appeal in court. The complainant claims that he was not given any information about that legal recourse. The information provided on the website of the Immigration Appeals Board states that the decisions of the Board are

[11] Application No. 64047/10.

[12] The State party also refers to *A.M. v. France*, communication No. 302/2006, decision adopted on 5 May 2010.

final and that the applicant must voluntarily leave the country, or be forced to do so by the police.

5.8 The complainant submits that the fact that he was arrested and scheduled to be forcibly removed from Norway illustrates that he had indeed exhausted all available domestic remedies. Furthermore, according to article 22 (5) (b) of the Convention, the remedies do not have to be exhausted if they are unreasonably prolonged or unlikely to bring effective relief. The complainant's asylum application had been continuing for almost five years.

5.9 The complainant also hopes that he will be able to mount a legal challenge, since the Committee has granted interim measures and he can now stay in the country and fight for his rights. The Committee should continue looking into the case until it makes its determination, since it can make an independent assessment based on "hard evidence". The complainant urges the Committee to maintain interim measures until then.

5.10 The claims of the State party regarding the lack of risk of irreparable harm if he is returned to his country are based on the 2007 report, which is almost 10 years old and does not reflect reality on the ground. The State party incorrectly claims that the central Government does not have effective control over the regions. The contrary is true: the central Government has an army, police forces and prison authorities in the country, including in the eastern part of the country and in Kinshasa.

Additional information from the complainant

6.1 On 27 July 2016, 11 August 2017 and 14 November 2017, the complainant provided additional submissions. He submits that he lost his court case, that he will be deported to the Democratic Republic of the Congo and that he was also forced to pay court fees. The judge again relied on the findings of the Directorate of Immigration and the Immigration Appeals Board. The judge did not consider his lawyer's arguments and other "independent evidence".

6.2 The complainant also submits that despite the Committee's request to the State party to refrain from expelling the complainant while it considers his case, he was detained in August 2016 by three Norwegian police officers, kept for 30 days in solitary confinement and deported in September 2016. At Kinshasa airport, the three Norwegian police officers who had travelled with him handed him over to the local police. Those police officers questioned the complainant regarding his reasons for leaving the country and why he was coming back escorted by three Norwegian police officers.

6.3 The complainant submits that he lived for one week in a church in Kinshasa and that finally the church helped him to buy a ticket to Bukavu. On 5 July 2017, three Congolese police officers arrived at his home to arrest him. They hit him and intimidated him. His wife gave them some "small money", but the police officers said that it was not enough and took him to the central prison in Bukavu.

6.4 At prison, he was treated like an "animal" for six days. On 5 June 2017, the prison was attacked by an unknown group of people and the complainant was able to escape. He went home, picked up some of his personal belongings and left for Uganda, where he is currently seeking asylum with the office of the Prime Minister in charge of refugees. The complainant does not feel secure, however, since he was told about unknown persons with his picture in their possession looking for him. The complainant therefore asks the Committee for further assistance so he can "live in peace".

State party's additional observations

7.1 On 10 October 2016, the State party provided additional observations, including a translated copy of the decision of the Oslo district court dated 26 July 2016. The State party submits that the complainant decided not to appeal this decision within the one-month statutory period required and, as a consequence, the decision became legally binding. Two administrative instances and one court instance have, after a comprehensive assessment of the facts and the law, found that the complainant's application for asylum cannot succeed

and there is no reason why he should have been afforded protection against deportation to the Democratic Republic of the Congo.

7.2 The State party submits that the complainant was able to appear in person before the Oslo district court and present his claims. All arguments and evidence submitted to the Committee were also heard by the domestic authorities. The fact that the complainant did not appeal the decision of 26 July 2016 to the Court of Appeal demonstrates that the author did not exhaust the available domestic remedies. The State party therefore requests the Committee to lift the interim measures and dismiss the complaint as inadmissible. If the Committee does not "adhere to this request", the State party has decided, "after careful consideration", not to accept the Committee's invitation to implement interim measures.

7.3 On 16 March 2017, the State party made an additional submission, in which it informed the Committee that it regretted that it had decided not to accept the State party's request to decide on admissibility separately from the merits of the complaint. The State party also informed the Committee that the complainant "was removed" from Norway to the Democratic Republic of the Congo on 28 September 2016 and that he was accompanied by representatives of the National Police Immigration Service on the flight.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case, the State party has challenged the admissibility of the complaint, based on the assertion that the complainant failed to appeal the decision of the Oslo district court of 26 July 2016. The complainant claims that he is not well-versed in the Norwegian legal system and was not provided with free legal assistance. The complainant further claims that the requirements regarding exhaustion of domestic remedies do not apply if those remedies are unreasonably prolonged or unlikely to bring effective relief. The records submitted by the parties indicate that the complainant was represented during the hearings at the Oslo district court. The complainant does not indicate, however, whether he could have continued being represented by the same lawyer on appeal, or in the alternative, the steps he has taken to secure new legal assistance or free legal aid, and that the further appeal of the decision of the Oslo district court to the Court of Appeal would not have brought an effective relief. In the circumstances, the Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (b) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.